



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART 504 FW 1, 2, 3, 4, 5 & 640 FW 1	SUBJECT Department of Agriculture Programs Inventory Property Disposal Program Debt Cancellation Conservation Contract Program Wetlands Reserve Program Wetland Conservation - Swampbuster USDA Conservation Programs Management of Non-Owned Lands Partners for Fish and Wildlife Program	RELEASE NUMBER 431
ORIGINATING OFFICE Division of Fish and Wildlife Management and Habitat Restoration		DATE September 24, 2003

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters are the Service Partners for Fish and Wildlife Program policy. They establish goals, requirements, limitations, and priorities for habitat improvement projects and technical assistance provided to private landowners.


Deputy DIRECTOR

FILING INSTRUCTIONS:

Remove:

504 FW 3, 01/11/95, FWM 168
None
504 FW 7, 02/17/95, FWM 175
504 FW 6, 02/17/95, FWM 174
504 FW 8, 02/17/95, FWM 176
Appendix 1, 504 FW 8, 02/17/95, FWM 176
Appendix 2, 504 FW 8, 02/17/95, FWM 176

Insert:

504 FW 1, 09/24/03, FWM 431
504 FW 2, 09/24/03, FWM 431
504 FW 3, 09/24/03, FWM 431
504 FW 4, 09/24/03, FWM 431
504 FW 5, 09/24/03, FWM 431
None
None
640 FW 1, 09/24/03, FWM 431

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2.1 What is the purpose of this chapter? This chapter describes our policy, role, and activities associated with the Debt Cancellation Conservation Contract Program (Debt for Nature Program) of the Farm Service Agency (FSA), U.S. Department of Agriculture (USDA). As used in this chapter, the terms “we,” “our,” and “Service” refer to the Fish and Wildlife Service.

2.2 What is the Debt Cancellation Conservation Contract Program? Under the Farm Loan Program, FSA provides various types of loans secured by real estate. All Farm Loan Program loans secured by real estate (whether the borrower is current or delinquent) may, upon request of the borrower, be considered for a debt cancellation conservation contract in exchange for cancellation of a portion of the borrower's indebtedness. Borrowers participating in the Debt Cancellation Conservation Contract Program select the amount of farm land that is placed under contract and are given the option of selecting a 50-, 30-, or 10-year contract term. The amount of debt to be cancelled depends upon the length of the contract, the amount of land securing the loan that will be placed under the debt cancellation conservation contract, and whether the borrower is delinquent or current. The area placed under the debt cancellation conservation contract cannot be used for the production of agricultural commodities during the term of the contract. (See 7 CFR 1951, Subpart S, Exhibit H, VII, Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled.)

2.3 What are the authorities for this chapter?

- A. Food Security Act of 1985.
- B. Food, Agriculture, Conservation, and Trade Act of 1990.
- C. Federal Agriculture Improvement and Reform Act of 1996.
- D. Farm Security and Rural Investment Act of 2002.
- E. 7 CFR 1951, Subpart S, Exhibit H, Conservation Contract Program.

2.4 What is the Service's role in the Debt Cancellation Conservation Contract Program? Our role in the Debt Cancellation Conservation Contract Program is described in the following documents:

A. 1987 MOU. Under the Memorandum of Understanding, May 14, 1987, Establishing Procedures for Interagency Coordination on Fish and Wildlife Resource Issues Affecting Farmer Programs, the Service acts as a technical assistant to FSA on matters dealing with fish and wildlife resources and other environmental analyses. We also act as a liaison between FSA and State fish and wildlife agencies and nongovernmental organizations to ensure that State and private concerns are fully considered. Attachment 1 to the

1987 MOU lists important resources to be protected, including wetlands, floodplains, riparian zones, coastal barriers, and threatened and endangered species habitats. We identify and recommend to FSA measures to protect and restore these important resources.

B. 1992 MOU. The Memorandum of Understanding, July 23, 1992, Regarding the Establishment of Wetland Conservation Easements on FmHA Inventory Property, sets forth the consultation procedures to be followed by FSA and the Service in FSA's compliance with Federal environmental protection laws, regulations, and Executive Orders and in assessment of the potential environmental impacts of FSA's actions, including the making of loans and disposal of lands or interests in such lands. FSA consults with the Service in implementing FSA's affirmative responsibilities to protect and enhance wetland resources under the requirements of Executive Order 11990, Protection of Wetlands, and as further specified in 7 CFR 1940, Subpart G—Environmental Program. Among other things, the Service identifies areas as high priority for threatened/endangered species and/or migratory birds as well as the presence of important resources (Attachment 1 to the 1987 MOU). If important resources are present, we recommend fish and wildlife conservation measures for inclusion in the environmental analysis, suitable/surplus determination process, and subsequent disposal actions.

C. 2002 MOU. The Memorandum of Understanding, August 6, 2002, Regarding the Implementation of the 2002 Farm Bill Conservation Provisions, obligates USDA and the Department of the Interior to coordinate, to the extent practicable, on activities that complement USDA's efforts to implement the 2002 Farm Bill as it relates to conservation programs, including information sharing and exchange of valuable perspectives.

2.5 Who is responsible for implementing the Debt Cancellation Conservation Contract Program within the Service?

A. Assistant Director – Fisheries and Habitat Conservation:

- (1) Oversees our role in the Debt Cancellation Conservation Contract Program.
- (2) Acts for the Service in consultations with FSA and other USDA agencies regarding activities related to the Debt Cancellation Conservation Contract Program.
- (3) Coordinates our activities related to the Debt Cancellation Conservation Contract Program with the Assistant Director - National Wildlife Refuge System and appropriate Service offices.

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B. Chief, Division of Fish and Wildlife Management and Habitat Restoration:

(1) Plans, develops, and monitors Service policies and procedures relating to the Debt Cancellation Conservation Contract Program.

(2) Prepares guidance, technical information, and training concerning the Debt Cancellation Conservation Contract Program for Regional and State/Ecoregion Partners for Fish and Wildlife coordinators.

(3) Represents the Service in dealing with USDA agencies on matters related to Debt Cancellation Conservation Contract Program and coordinates the resolution of issues elevated to the Washington Office from the field.

C. Regional Directors will implement the Debt Cancellation Conservation Contract Program within their Region. Each Regional Director will designate a **Regional Partners for Fish and Wildlife coordinator** who will:

(1) Provide technical guidance to field offices regarding assistance to FSA and maintain consistent implementation of our role in the Debt Cancellation Conservation Contract Program.

(2) Maintain current copies of FSA policy, regulations, and guidance materials for distribution to field stations as needed.

(3) Elevate to the Washington Office issues that are nationally significant and unresolvable at the Regional level.

D. State/Ecoregion Partners for Fish and Wildlife Coordinators or their designees will:

(1) Coordinate with FSA at the State and county level on matters related to Service involvement in the Debt Cancellation Conservation Contract Program.

(2) Maintain current copies of FSA policy, regulations, and guidance materials related to the Debt Cancellation Conservation Contract Program.

(3) Serve as a member of the contract review team upon request from the FSA loan servicing official, to review borrower-applicant properties containing wetlands and other important resources as described in the 1987 MOU.

(4) Develop recommendations on: Debt Cancellation Conservation Contract Program area identification; contract terms and conditions; habitat restoration actions; the duration of proposed contracts; and proposed management entities.

(5) Coordinate and complete all feasible habitat restoration actions conducted through the Partners for Fish and Wildlife Program in connection with completed Debt Cancellation Conservation Contract Program contracts.

2.6 What are the Service's objectives in assisting FSA in implementing the Debt Cancellation Conservation Contract Program?

A. To help USDA develop and implement policies related to protection of Federal trust species and their habitats on lands subject to debt cancellation conservation contracts.

B. To help USDA establish debt cancellation conservation contracts on environmentally important habitats associated with FSA's loan making and servicing activities.

C. To maximize opportunities to protect and restore fish and wildlife habitats on private lands owned by FSA borrowers.

D. To provide technical assistance and, where appropriate, financial assistance to help USDA restore degraded wetlands and other fish and wildlife habitats protected by FSA debt cancellation conservation contracts.

2.7 What is the Service's policy regarding establishment and management of FSA debt cancellation conservation contracts? The following guidelines reflect Service policy regarding establishment and management of FSA debt cancellation conservation contracts:

A. Contract review teams. We participate as a member of contract review teams established by the FSA loan servicing official; identify wetlands and other Federal trust species habitats as well as important resources listed in Attachment 1 to the 1987 MOU; and make recommendations concerning the items described in paragraph 2.12 for the contract review team report.

B. Service recommendations. We provide recommendations related to the identification of debt cancellation conservation contract areas; conservation and wildlife measures necessary to achieve significant natural resource benefits; compatible uses; debt cancellation conservation contract terms and conditions; identification of a management entity; and development of a conservation management plan.

C. Management of debt cancellation conservation contract areas.

(1) We will neither accept debt cancellation conservation contract areas into the National Wildlife Refuge System nor manage them. Current FSA regulations do not provide adequate assurances of either contract enforceability or survivability in the event of foreclosure by a superior lien holder.

(2) By providing input as a member of the contract review team, we assist State, local, and private conservation entities in their efforts to obtain management rights important to their programs.

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(3) We provide financial assistance through cooperative agreements covering habitat improvement projects that will significantly improve habitat for Federal trust species in established priority areas of the Nation.

(4) All habitat improvement activities conducted on debt cancellation conservation contract areas utilizing Partners for Fish and Wildlife Program 1121-HR funds must follow the policies described in 640 FW 1 and must be covered by a written agreement with the landowner.

2.8 When can a debt conservation contract be established? Debt conservation contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland, or highly erodible land. (See paragraphs 2.9, 2.10, and 2.11.)

2.9 What are conservation purposes? For purposes of the Debt Cancellation Conservation Contract Program, conservation purposes include protecting or conserving any of the following environmental resources or land uses:

A. Wetland. Wetland, except when such term is part of the term Converted Wetland, is land that the USDA Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils. (See 7 CFR 1951, Subpart S, Exhibit H, for more information.)

B. Highly erodible land. Highly erodible land is land that NRCS has determined has an erodibility index of 8 or more.

C. Upland. Upland refers to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(1) One-hundred year floodplain.

(2) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State, or Federal importance.

(3) Aquifer recharge area of local, regional, or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986.

(4) Area of high water quality or scenic value.

(5) Area containing historic or cultural property, which is listed in or eligible for listing in the National Register of Historic Places, as provided by the National Historic Preservation Act.

(6) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas.

(7) Area within or adjacent to a National Park; Fish and Wildlife Service administered area; a State fish and wildlife agency administered area; a National Forest; a Bureau of Land Management administered area; a Wilderness Area; a National Trail; a unit of the Coastal Barrier Resource System; abandoned railroad corridors contained in local, State, or Federal open space, recreation, or trail plans; a Federal or State Wild or Scenic River; U.S. Army Corps of Engineers land designated for flood control or recreation purposes; State and local recreation, natural, or wildlife areas; or State conservation agency administered areas.

(8) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII, or VIII in NRCS's Land Capability Classification System.

D. Wildlife habitat. Wildlife habitat includes the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the conservation agency within the State as being of State, regional, or local importance, or as determined by the Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

2.10 What are recreation purposes? For purposes of the Debt Cancellation Conservation Contract Program, recreation purposes are activities that include providing public use for both consumption (e.g., hunting, fishing) and nonconsumption (e.g., camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats; ensures public safety; complies with applicable laws, regulations, and ordinances; and permits the operation of the remaining farm enterprise.

2.11 What are wildlife purposes? For purposes of the Debt Cancellation Conservation Contract Program, wildlife purposes include establishing and managing areas that contain fish and wildlife habitats of local, regional, State, or Federal importance.

2.12 How are requests for debt cancellation conservation contracts reviewed for eligibility? All Farm Loan Program loans that are secured by real estate may be considered for a debt cancellation conservation contract. When a borrower requests a debt cancellation conservation contract, the FSA loan servicing official establishes a contract review team that consists of NRCS, FSA, and Service representatives, at a minimum, and may also include representatives from State fish and wildlife agencies; conservation districts; the National

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Park Service; the Forest Service; the State Historic Preservation Offices; State conservation agencies; State environmental protection agencies; State natural resource agencies; adjacent public landowners; and any other entities that might have an interest in, and that qualify to be a management authority for, a contract. NRCS leads the contract review team. NRCS invites the review team members and the borrower as well as any lien holders to attend a site visit, which, to the extent practicable, is conducted within 15 days of the date the review team members are invited to participate. Within 30 days of the site visit, the contract review team develops a report and provides it to the FSA loan servicing official. The contract review team's report addresses the following items:

A. Amount of land. The amount of land, if any, that is wetland, wildlife habitat, upland, or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended that go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient fulfillment of the contract's terms and conditions.

B. Suitability of the land. The suitability of the land for conservation, recreation, or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked. First priority is given to land contract opportunities to benefit Federal trust species (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration is given to opportunities to benefit a combination of conservation, recreation, and wildlife habitat purposes.

C. Special terms and conditions. If appropriate, any special terms and conditions that would need to be included in the contract plus unique or important features of the property that would not be adequately addressed by the standard contract terms and conditions.

D. Proposed management plan. A proposed management plan consistent with the purpose or purposes for which the debt cancellation conservation contract would be established, outlining the various management alternatives, which are based upon future needs, fund availability, and identification within the management plan. The management plan provides guidance regarding the conservation practices to be followed and the costs that may occur in the establishment and maintenance of the contract, as well as specific recommendations about whether or not public recreational use and public hunting should be allowed, with supporting reasons for the recommendations.

2.13 How are debt cancellation conservation contracts established? The FSA loan servicing official reviews the contract review team's report to determine the feasibility of establishing a conservation contract.

A. Contract infeasible. If the contract review team's report indicates that a contract is not feasible given the nature of the land, or other factors, the FSA loan servicing official will inform the borrower of the reasons that the contract has been denied and of the borrower's right to appeal the denial of the contract or to meet with the loan servicing official.

B. Contract feasible. If the contract review team's report indicates that a contract is feasible, FSA will work with the borrower to determine the following:

(1) Contract term. FSA will give the borrower the option of selecting a 50-, 30-, or 10-year contract term.

(2) Amount of cancelled debt. FSA will calculate the amount of Farm Loan Program debt that can be cancelled by a debt cancellation conservation contract, using the formula found in 7 CFR 1951, Subpart G, Exhibit H, Section VII.

(3) Feasibility of debt cancellation. The FSA loan servicing official will determine whether or not the borrower will be able to develop a feasible plan for farm operations for the current and coming year.

(4) Contract area. The boundaries of the contract area will be determined by the most appropriate method, including rectangular surveys and aerial photographs.

(5) Reaching agreement with the borrower. FSA will inform the borrower of the debt cancellation conservation contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. FSA will also provide the borrower with a copy of the contract review team's report. If the borrower decides to enter into the debt cancellation conservation contract, the FSA loan servicing official and the borrower will sign the appropriate FSA forms.

2.14 Who is responsible for debt cancellation conservation contract enforcement? USDA is responsible for debt cancellation conservation contract enforcement. By written agreement, USDA may delegate its responsibility to a Federal agency, a State, a local government, a person, or an individual to carry out all or a portion of the activities necessary to monitor and enforce the terms and conditions of the debt cancellation conservation contract and to implement its management plan.